



Virginia Association of School Superintendents

P.O. Box 68 ♦ Batesville ♦ Virginia 22924

Phone (804) 562-4430

April 1, 2020

United States Congress
Washington, D.C. 20515

Dear Senators and Representatives:

I am writing on behalf of the Virginia Association of School Superintendents (VASS) and its 133 local school division superintendents in the Commonwealth. We are gratified that Congress has moved swiftly to provide school divisions with administrative, assessment and accountability flexibility regarding the implementation of Every Student Succeeds Act. However, I write to voice our concerns that Congress is not appropriately considering the unprecedented challenge faced by school divisions to fully implement the Individuals with Disabilities in Education Act (IDEA) during this COVID-19 national emergency, and request that new flexibility be urgently given to school divisions under IDEA.

In particular, I urge you to ensure that any forthcoming COVID-19 relief package grants the Secretary of Education the authority to waive the due process requirements under 20 U.S. Code § 1415 under *very limited* circumstances. The Secretary should be able to conclude that, pursuant to 20 U.S.C. § 1415(f)(E)(ii), any failure to provide in-person instruction pursuant to a student's IEP during this national emergency is a technical contravention of the IDEA and therefore not subject to IDEA's due process requirements. Furthermore, the Secretary should be able to declare that timelines under IDEA be waived during the times where schools are closed and physical contact with students is prohibited under federal, state or local order.

Virginia school divisions are now closed for the remainder of the 2019-20 school year. Virginia school personnel are working hard to provide all students continuity of learning and to fairly assess this year's work to accommodate graduation and promotion of students. Due to the inconsistencies of capacity, especially with technology, throughout school divisions in Virginia, and even within single school divisions, accommodating the needs of all students equitably is a challenge.

While IEPs are being implemented as much as possible during the pandemic and most certainly will resume once this emergency passes, during the emergency school divisions must not be held liable under the procedural due process requirements provided by the Act for a failure to meet IEPs due to circumstances beyond their control.

Without the requested relief, we can reasonably expect some who may be considering lawsuits to take advantage of school division's challenges in complying with all IEPs during this crisis. The current situation asks even more of our school professionals, who are also now concerned about potential litigation without flexibility in implementing IDEA.

On behalf of Virginia's public school superintendents, I am not asking for a waiver of our responsibility in serving the most challenged students, but only asking for temporary authority to be given to the Secretary of Education to work with school divisions more appropriately in serving our special education students during the months ahead. Thank you for considering this urgent request.

Sincerely,

A handwritten signature in blue ink, appearing to read "Howard B. Kue". The signature is fluid and cursive, with the first name "Howard" being the most prominent.

Executive Director, VASS